

**§ 143-215.108. Control of sources of air pollution; permits required.**

(a) Except as provided in subsections (a1) and (a2) of this section, no person shall do any of the following things or carry out any of the following activities that contravene or will be likely to contravene standards established pursuant to G.S. 143-215.107 or set out in G.S. 143-215.107D unless that person has obtained a permit for the activity from the Commission and has complied with any conditions of the permit:

- (1) Establish or operate any air contaminant source, except as provided in G.S. 143-215.108A.
- (2) Build, erect, use, or operate any equipment that may result in the emission of an air contaminant or that is likely to cause air pollution, except as provided in G.S. 143-215.108A.
- (3) Alter or change the construction or method of operation of any equipment or process from which air contaminants are or may be emitted.
- (4) Repealed by Session Laws 2003-428, s. 1, effective August 19, 2003.

(a1) The Commission may by rule establish procedures that meet the requirements of section 502(b)(10) of Title V (42 U.S.C. § 7661a(b)(10)) and 40 Code of Federal Regulations § 70.4(b)(12) (1 July 1993 Edition) to allow a permittee to make changes within a permitted facility without requiring a revision of the permit.

(a2) The Commission may adopt rules that provide for a minor modification of a permit. At a minimum, rules that provide for a minor modification of a permit shall meet the requirements of 40 Code of Federal Regulations § 70.7(e)(2) (1 July 1993 Edition). If the Commission adopts rules that provide for a minor modification of a permit, a permittee shall not make a change in the permitted facility while the application for the minor modification is under review unless the change is authorized under the rules adopted by the Commission.

(b) The Commission shall act upon all applications for permits so as to effectuate the purposes of this Article by reducing existing air pollution and preventing, so far as reasonably possible, any increased pollution of the air from any additional or enlarged sources.

(c) The Commission shall have the power:

- (1) To grant and renew a permit with any conditions attached that the Commission believes necessary to achieve the purposes of this Article or the requirements of the Clean Air Act and implementing regulations adopted by the United States Environmental Protection Agency;
- (2) To grant and renew any temporary permit for such period of time as the Commission shall specify even though the action allowed by such permit may result in pollution or increase pollution where conditions make such temporary permit essential;
- (3) To terminate, modify, or revoke and reissue any permit upon not less than 60 days' written notice to any person affected;
- (3a) To suspend any permit pursuant to the provisions of G.S. 150B-3(c);
- (4) To require all applications for permits and renewals to be in writing and to prescribe the form of such applications;
- (5) To request such information from an applicant and to conduct such inquiry or investigation as it may deem necessary and to require the submission of plans and specifications prior to acting on any application for a permit;
- (5a) To require that an applicant satisfy the Department that the applicant, or any parent, subsidiary, or other affiliate of the applicant or parent:
  - a. Is financially qualified to carry out the activity for which a permit is required under subsection (a); and
  - b. Has substantially complied with the air quality and emission control standards applicable to any activity in which the applicant has

previously engaged, and has been in substantial compliance with federal and state laws, regulations, and rules for the protection of the environment.

As used in this subdivision, the words "affiliate," "parent," and "subsidiary" have the same meaning as in 17 Code of Federal Regulations 240.12b-2 (1 April 1990 Edition);

- (6) To adopt rules, as it deems necessary, establishing the form of applications and permits and procedures for the granting or denial of permits and renewals pursuant to this section; and all permits, renewals and denials shall be in writing;
  - (7) To prohibit any stationary source within the State from emitting any air pollutant in amounts that will prevent attainment or maintenance by any other state of any national ambient air quality standard or that will interfere with measures required to be included in the applicable implementation plan for any other state to prevent deterioration of air quality or protect visibility; and
  - (8) To designate certain classes of activities for which a general permit may be issued, after considering the environmental impact of an activity, the frequency of the activity, the need for individual permit oversight, and the need for public review and comment on individual permits.
- (d) (1) The Commission may conduct any inquiry or investigation it considers necessary before acting on an application and may require an applicant to submit plans, specifications, and other information the Commission considers necessary to evaluate the application. A permit application may not be deemed complete unless it is accompanied by a copy of the request for determination as provided in subsection (f) of this section that bears a date of receipt entered by the clerk of the local government and until the 15-day period for issuance of a determination has elapsed.
- (2) The Commission shall adopt rules specifying the times within which it must act upon applications for permits required by Title V and other permits required by this section. The times specified shall be extended for the period during which the Commission is prohibited from issuing a permit under subdivisions (3) and (4) of this subsection. The Commission shall inform a permit applicant as to whether or not the application is complete within the time specified in the rules for action on the application. If the Commission fails to act on an application for a permit required by Title V or this section within the time period specified, the failure to act on the application constitutes a final agency decision to deny the permit. A permit applicant, permittee, or other person aggrieved, as defined in G.S. 150B-2, may seek judicial review of a failure to act on the application as provided in G.S. 143-215.5 and Article 4 of Chapter 150B of the General Statutes. Notwithstanding the provisions of G.S. 150B-51, upon review of a failure to act on an application for a permit required by Title V or this section, a court may either: (i) affirm the denial of the permit or (ii) remand the application to the Commission for action upon the application within a specified time.
- (3) If the Administrator of the United States Environmental Protection Agency validly objects to the issuance of a permit required by Title V within 45 days after the Administrator receives the proposed permit and the required portions of the permit application, the Commission shall not issue the permit until the Commission revises the proposed permit to meet all objections

noted by the Administrator or otherwise satisfies all objections consistent with Title V and implementing regulations adopted by the United States Environmental Protection Agency.

- (4) If the Administrator of the United States Environmental Protection Agency validly objects to the issuance of a permit required by Title V after the expiration of the 45-day review period specified in subdivision (3) of this subsection as a result of a petition filed pursuant to section 505(b)(2) of Title V (42 U.S.C. § 7661d(b)(2)) and prior to the issuance of the permit by the Commission, the Commission shall not issue the permit until the Commission revises the proposed permit to meet all objections noted by the Administrator or otherwise satisfies all objections consistent with Title V and implementing regulations adopted by the United States Environmental Protection Agency.

(d1) No Title V permit issued pursuant to this section shall be issued or renewed for a term exceeding five years. All other permits issued pursuant to this section shall be issued for a term of eight years.

(e) A permit applicant or permittee who is dissatisfied with a decision of the Commission on a permit application may commence a contested case by filing a petition under G.S. 150B-23 within 30 days after the Commission notifies the applicant or permittee of its decision. If the permit applicant or permittee does not file a petition within the required time, the Commission's decision on the application is final and is not subject to review. The filing of a petition under this subsection will stay the Commission's decision until resolution of the contested case.

(e1) A person other than a permit applicant or permittee who is a person aggrieved by the Commission's decision on a permit application may commence a contested case by filing a petition under G.S. 150B-23 within 30 days after the Commission provides notice of its decision on a permit application, as provided in G.S. 150B-23(f), or by posting the decision on a publicly available Web site. The filing of a petition under this subsection does not stay the Commission's decision except as ordered by the administrative law judge under G.S. 150B-33(b).

(f) An applicant for a permit under this section for a new facility or for the expansion of a facility permitted under this section shall request each local government having jurisdiction over any part of the land on which the facility and its appurtenances are to be located to issue a determination as to whether the local government has in effect a zoning or subdivision ordinance applicable to the facility and whether the proposed facility or expansion would be consistent with the ordinance. The request to the local government shall be accompanied by a copy of the draft permit application and shall be delivered to the clerk of the local government personally or by certified mail. The determination shall be verified or supported by affidavit signed by the official designated by the local government to make the determination and, if the local government states that the facility is inconsistent with a zoning or subdivision ordinance, shall include a copy of the ordinance and the specific reasons for the determination of inconsistency. A copy of any such determination shall be provided to the applicant when it is submitted to the Commission. The Commission shall not act upon an application for a permit under this section until it has received a determination from each local government requested to make a determination by the applicant. If a local government determines that the new facility or the expansion of an existing facility is inconsistent with a zoning or subdivision ordinance, and unless the local government makes a subsequent determination of consistency with all ordinances cited in the determination or the proposed facility is determined by a court of competent jurisdiction to be consistent with the cited ordinances, the Commission shall attach as a condition of the permit a requirement that the applicant, prior to construction or operation

of the facility under the permit, comply with all lawfully adopted local ordinances, including those cited in the determination, that apply to the facility at the time of construction or operation of the facility. If a local government fails to submit a determination to the Commission as provided by this subsection within 15 days after receipt of the request, the Commission may proceed to consider the permit application without regard to local zoning and subdivision ordinances. This subsection shall not be construed to affect the validity of any lawfully adopted franchise, local zoning, subdivision, or land-use planning ordinance or to affect the responsibility of any person to comply with any lawfully adopted franchise, local zoning, subdivision, or land-use planning ordinance. This subsection shall not be construed to limit any opportunity a local government may have to comment on a permit application under any other law or rule. This subsection shall not apply to any facility with respect to which local ordinances are subject to review under either G.S. 104E-6.2 or G.S. 130A-293.

(g) Repealed by Session Laws 2014-120, s. 38(c), effective September 18, 2014.

(h) Expedited Review of Applications Certified by a Professional Engineer. – The Commission shall adopt rules governing the submittal of permit applications certified by a professional engineer, including draft permits, that can be sent to public notice and hearing upon receipt and subjected to technical review by personnel within the Department. These rules shall specify, at a minimum, any forms to be used; a checklist for applicants that lists all items of information required to prepare a complete permit application; the form of the certification required on the application by a professional engineer; and the information that must be included in the draft permit. The Department shall process an application that is certified by a professional engineer as provided in subdivisions (1) through (7) of this subsection.

(1) Initiation of Review. – Upon receipt of an application certified by a professional engineer in accordance with this subsection and the rules adopted pursuant to this subsection, the Department shall determine whether the application is complete as provided in subdivision (2) of this subsection. Within 30 days after the date on which an application is determined to be complete, the Department shall:

- a. Publish any required notices, using the draft permit included with the application;
- b. Schedule any required public meetings or hearings on the application and permit; and
- c. Initiate any and all technical review of the application in a manner to ensure substantial completion of the technical review by the time of any public hearing on the application, or if there is no hearing, by the close of the notice period.

(2) Completeness Review. – Within 10 working days of receipt of the permit application certified by a professional engineer under this subsection, the Department shall determine whether the application is complete for purposes of this subsection. The Department shall determine whether the permit application certified by a professional engineer is complete by comparing the information provided in the application with the checklist contained in the rules adopted by the Commission pursuant to this subsection.

- a. If the application is not complete, the Department shall promptly notify the applicant in writing of all deficiencies of the application, specifying the items that need to be included, modified, or supplemented in order to make the application complete, and the 10-day time period is suspended after this request for further information. If the applicant submits the requested information within the time specified, the 10-day time period shall begin again on

the day the additional information was submitted. If the additional information is not submitted within the time periods specified, the Department shall return the application to the applicant, and the applicant may treat the return of the application as a denial of the application or may resubmit the application at a later time.

- b. If the Department fails to notify the applicant that an application is not complete within the time period set forth in this subsection, the application shall be deemed to be complete.
- (3) Time for Permit Decision. – For any application found to be complete under subdivision (2) of this subsection, the Department shall issue a permit decision within 30 days of the last day of any public hearing on the application, or if there is no hearing, within 30 days of the close of the notice period.
- (4) Rights if Permit Decision Not Made in Timely Fashion. If the Department fails to issue a permit decision within the time periods specified in subdivision (3) of this subsection, the applicant may:
  - a. Take no action, thereby consenting to the continued review of the application; or
  - b. Treat the failure to issue a permit decision as a denial of the application and appeal the denial as provided in subdivision (2) of subsection (d) of this section.
- (5) Power to Halt Review. – At any time after the permit application certified by a professional engineer has been determined to be complete under subdivision (2) of this subsection, the Department may immediately terminate review of that application, including technical review and any hearings or meetings scheduled on the application, upon a determination of one of the following:
  - a. The permit application is not in substantial compliance with the applicable rules; or
  - b. The applicant failed to pay all permit application fees.
- (6) Rights if Review Halted. – If the Department terminates review of an application under subdivision (5) of this subsection, the applicant may take any of the following actions:
  - a. Revise and resubmit the application; or
  - b. Treat the action as a denial of the application and appeal the denial under Article 3 of Chapter 150B of the General Statutes.
- (7) Option; No Additional Fee. – The submittal of a permit application certified by a professional engineer to be considered under this subsection shall be an option and shall not be required of any applicant. The Department shall not impose any additional fees for the receipt or processing of a permit application certified by a professional engineer.

(i) Rules for Review of Applications Other Than Those Certified by a Professional Engineer. – The Commission shall adopt rules governing the times of review for all permit applications submitted pursuant to this section other than those certified by a professional engineer pursuant to subsection (h) of this section. Those rules shall specify maximum times for, among other things, the following actions in reviewing the permit applications covered by this subsection:

- (1) Determining that the permit application is complete;
- (2) Requesting additional information to determine completeness;

- (3) Determining that additional information is needed to conduct a technical review of the application;
- (4) Completing all technical review of the permit application;
- (5) Holding and completing all public meetings and hearings required for the application;
- (6) Completing the record from reviewing and acting on the application; and
- (7) Taking final action on the permit, including granting or denying the application.

(j) No Power to Regulate Residential Combustion. – Nothing in this section shall be interpreted to give the Commission or the Department the power to regulate the emissions from any combustion heater, appliance, or fireplace in private dwellings, except to the extent required by federal law. For purposes of this subsection, "combustion heater, appliance, or fireplace" means any heater, appliance, or fireplace that burns combustion fuels, including, but not limited to, natural or liquefied petroleum gas, fuel oil, kerosene, wood, or coal, for heating, cooking, drying, or decorative purposes. (1973, c. 821, s. 6; c. 1262, s. 23; 1979, c. 545, ss. 2, 3; 1987, c. 461, s. 2; c. 827, ss. 154, 206; 1989, c. 168, s. 30; c. 492; 1989 (Reg. Sess., 1990), c. 1037, s. 2; 1991, c. 552, s. 5; c. 629, s. 1; c. 761, s. 27(a)-(c); 1993, c. 400, s. 8; 1995, c. 484, s. 2; 1995 (Reg. Sess., 1996), c. 728, s. 1; 2002-4, s. 2; 2003-340, s. 1.8(b); 2003-428, ss. 1, 2; 2011-398, s. 60(a); 2013-413, s. 29; 2014-115, s. 17; 2014-120, ss. 24(g), 38(c); 2015-286, s. 4.17(a).)